

1 Miles Woodlief (SBN124467)
2 ArcherTM
3 775 East Blithedale Avenue
4 Suite 514
5 Mill Valley, California
6 phone: (415) 730-3032
7 facsimile:(415) 366-2956
8 Attorney for Debtor and Debtor-in-Possession

9
10 UNITED STATES BANKRUPTCY COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 (Oakland Division)
13

In Re:)	Chapter 11
Nutrition 53, Inc.)	Case No.: 4:23-bk-40997
Employer's Tax Identification (EIN) No. :)	
xx-xxx9583)	
Debtor)	

14 **NOTICE AND OPPORTUNITY FOR HEARING CONCERNING APPLICATION TO**
15 **FOR ORDER APPROVING EMPLOYMENT OF MILES ARCHER WOODLIEF AS**
16 **BANKRUPTCY COUNSEL**

17 TO ALL CREDITORS, THEIR ATTORNEYS OF RECORD, THE UNITED STATES
18 TRUSTEE AND ALL OTHER PARTIES IN INTEREST:

19 PLEASE TAKE NOTICE that Debtor and Debtor-in possession Nutrition 53, Inc. seeks
20 an Order granting its Application to employ Miles Archer Woodlief as Counsel, effective
21 September 23, 2024, the date the Application was first submitted. A copy of this Application
22 and supporting documents is attached.

23 United States Bankruptcy Court for the Northern District of California Local Rule 9014-
24 1(b)(3)(a) prescribes the procedures to be followed with respect to this Notice, as follows:


25 **Any objection to the requested relief, or a request for hearing on the matter, must**
be filed and served upon the initiating party within 21 days of mailing the notice;

Any objection or request for a hearing must be accompanied by any declarations or memoranda of law any requesting party wishes to present in support of its position;

If there is no timely objection to the requested relief or a request for hearing, the court may enter an order granting the relief by default.

In the event of a timely objection or request for hearing, the initiating party will give at least seven days written notice of the hearing to the objecting or requesting party, and to any trustee or committee appointed in the case.

Dated: September 23, 2024

By: 
Miles Woodlief (SBN124467)
ArcherTM
775 East Blithedale Avenue
Suite 514
Mill Valley, California
phone: (415) 730-3032

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10 UNITED STATES BANKRUPTCY COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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13

14 In Re:)
15 Nutrition 53, Inc.) Chapter 11
16 497 Edison Ct. Suite B)
17 Fairfield, CA 94534) Case No.:
18 Employer's Tax Identification (EIN) No. :)
19 30-0369583)

20 Debtor
21

22 **APPLICATION TO EMPLOY MILES ARCHER WOODLIEF**
23 **AS BANKRUPTCY COUNSEL**
24

25 Nutrition 53, Inc., Debtor and Debtor in Possession ("Debtor"), moves the Court for an
Order, in the form attached, to authorize the employment of Miles Archer Woodlief as its
Bankruptcy Counsel. In support of this Application, Debtor respectfully represents as
follows:

1. On August 11, 2023 (the "Filing Date"), Debtor filed a voluntary Chapter 11
petition for reorganization under 11 U.S.C. (the "Code"), section 301, in this Court. Debtor
continues to manage and operate its businesses and properties as debtor-in-possession under
Code sections 1107 and 1108. No trustee or examiner has been appointed, and no official
committees have yet been appointed under Code section 1102.

1 2. Debtor desires to employ as its bankruptcy counsel in this case Miles Archer
2 Woodlief, Attorney at Law (“Woodlief”), an attorney duly admitted to practice in this Court.

3 3. Debtor employed Woodlief before the filing in connection with the debt
4 restructuring issues that predicated this bankruptcy filing. Debtor selected Woodlief to
5 represent them in this bankruptcy case because Woodlief has considerable experience in the
6 representation of debtor in complex Chapter 11 reorganization cases, as well as significant
7 restructuring experience outside of bankruptcy, and has over the past year, developed a
8 background and understanding of Debtor’s circumstances that leaves him in a unique position
9 to represent Debtor. Woodlief is well qualified to represent Debtor as debtor in possession in
10 this Chapter 11 case.

11 4. Since the filing, Woodlief has represented Debtor without cost and will not seek
12 fees for the services rendered during that period. He will, however, seek reimbursement of
13 out-of-pocket expenses from this period.

14 5. The professional services that Woodlief is to render can be summarized, without
15 limitation, as follows:

16 a. To give advice to Debtor with respect to its powers and duties as debtor in
17 possession in the continued management and operation of its and businesses affairs and
18 property;

19 b. To negotiate with Debtor’s creditors and other parties in interest in
20 working out a plan of reorganization, and to take necessary legal steps in order to
21 confirm such plan, including, if need be, negotiations for financing such plan;

22 c. To prepare on Debtor’s behalf, as debtor in possession, necessary
23 applications, objections, motions, complaints, answers, orders, reports and other
24 pleadings and documents;

1 d. To appear before the Court and the United States Trustee and to protect
2 Debtor's interests before the Court and the United States Trustee;

3 e. To perform such other legal services for Debtor, as debtor in possession,
4 as may be necessary and appropriate.

5 5. Under Code section 327(a), Debtor wishes to employ Woodlief using a rather unique
6 approach due to the emergency nature of the petition filed in this case and the extensive legal
7 services that Debtor anticipates may be required. Because this was an emergency filing,
8 Debtor was unable to gather sufficient funds to pay Woodlief a sufficient retainer in
9 connection with his representation of Debtor in this case. Therefore, Debtor proposes the
10 following payment system:

11 a. Prior to the commencement of this case, Woodlief received a total of
12 \$20,000 from Debtor, all of which was used for legal services in the lead-up to the filing;

13 b. Since the filing, Woodlief has neither received fees for nor invoiced for
14 services.

15 c. Debtor will monthly set aside sufficient funds to pay the fees and costs of
16 Woodlief's invoice for services rendered in the preceding month;

17 d. Debtor will pay such funds to Woodlief only after and in a manner
18 consistent with entry of an Order by this Court approving his fees and costs and authorizing
19 the payment of same;

20 e. Woodlief shall conform all invoices submitted to the U.S. Trustee's
21 Guidelines;

22 f. Woodlief shall be compensated for his services actually rendered on an
23 hourly basis at a reduced billing rate of \$450.00 (Woodlief's customary rate billing rate is
24 \$650.00 per hour), which Debtor believes is below that of attorneys with comparable
25 experience providing legal services in this area and which Debtor submits is reasonable;

g. If necessary, upon Court Order, excess fees and costs paid would be disgorged by Woodlief.

6. As Debtor does not have sufficient funds for an adequate retainer, and as this process will have no adverse impact on its bankruptcy estate and will, in fact, allow more funds to be available for the distribution to its creditors, Debtor believes it is an appropriate vehicle to get payment to Woodlief without compromising its ability to operate as a debtor-in-possession.

7. To the best of Debtor's knowledge, Woodlief has no connection with our creditors or any other parties in interest or its respective attorneys, except that Woodlief represents Debtor in these proceedings and represents one of its equity holders in a separate bankruptcy case, all as stated in the affidavit of Miles Archer Woodlief, attached to this application.

8. Woodlief does not represent any interests adverse to Debtor or to its estate and is a "disinterested person" as that term is defined in Code section 101(14). Moreover, the employment of Woodlief is necessary and would be in the best interests of Debtor and its estate.

WHEREFORE, Debtor respectfully requests that this Court enter the attached order.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed this 23rd day of September, 2024.

By: Kristine Manpalaz CEO
Nutrition 53, Inc.
Debtor and Debtor-in-Possession.

1 Miles Woodlief (SBN124467)
2 ArcherTM
3 775 East Blithedale Avenue
4 Suite 514
5 Mill Valley, California
6 phone: (415) 730-3032
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8 Attorney for Debtor and Debtor-in-Possession

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10 UNITED STATES BANKRUPTCY COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 (Oakland Division)
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14 In Re:)
15) Chapter 11
16 Nutrition 53, Inc.)
17) Case No.: 4:23-bk-40997
18 497 Edison Ct. Suite B)
19 Fairfield, CA 94534)
20)
21 Employer's Tax Identification (EIN) No. :)
22 xx-xxx9583)

23 Debtor
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25

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27 **DECLARATION IN SUPPORT OF APPLICATION TO**
28 **EMPLOY MILES ARCHER WOODLIEF AS**
29 **BANKRUPTCY COUNSEL FOR DEBTOR IN POSSESSION**
30

31 I, Miles Archer Woodlief, state as follows:

- 32 1. I am an attorney currently practicing at 775 East Blithedale Avenue, Suite 514,
33 Mill Valley, CA 94941 and have been duly admitted to practice in this Court.
- 34 2. As far as I have been able to ascertain after due inquiry, I have no connection
35 with Nutrition 53, Inc., Debtor and Debtor in Possession (“Debtor”), its creditors or any other
36 parties in interest, their respective attorneys and accountants, the United States Trustee or any
37 person employed in the office of the United States Trustee. My initial inquiry of actual or
38 potential conflicts has been of necessity limited to a search of my files with respect to each of

1 the principal secured and unsecured creditors of Debtor and has been updated to include all
2 creditors who filed proofs of claim.

3 3. NB: I represent one of Debtor's directors and equity holders and his wife,
4 William and Julie Romanowski, in their individual Chapter 11 case, but in no other capacity.
5 Those individuals will not have a claim in this case and neither is an officer of Debtor. They are
6 co-defendants in a claim brought by the IRS and the joint representation will allow for
7 efficiencies that will lead to a stronger defense beneficial to this estate. Based on the underlying
8 facts, I do not believe this representation presents a conflict of interest for either estate.

9 4. Therefore, as far as I have been able to ascertain after due inquiry, I represent no
10 interests adverse to Debtors or to their estate.

11 5. I am a "disinterested person" as defined in 11 U.S.C. Section 101(14). I:
12 a. am not a creditor, equity security holders or insider of Debtor;
13 b. Am not and was not an investment banker for any outstanding security of
14 Debtor;
15 c. have not been, within three (3) years before the date of the filing of Debtor's
16 Chapter 11 petition, (i) an investment banker for a security of Debtor, or (ii) an attorney for
17 such an investment banker in connection with the offer, sale, or issuance of a security of
18 Debtor; and
19 d. am not and was not, within two (2) years before the date of the filing of
20 Debtor's Chapter 11 petition, a director, officer, or employee of Debtor or of an investment
21 banker specified in subparagraph (b) or (c) of this paragraph.

22 6. I have filed a statement of attorney under Federal Rule of Bankruptcy Procedure
23 2016(b).

24 7. I have not agreed to share any compensation that may be awarded to me in
25 connection with my representation of Debtor in this bankruptcy case with any other person.

8. Since the filing date through the date of this Application, I have not invoiced
Debtor for my services, nor will I be doing so. I did not do so to allow the Debtor the
opportunity to obtain operational integrity, which I believe it has now done.

8. I will, however, seek reimbursement of out-of-pocket expenses from this period.

THEREFORE, I respectfully request that this Court issue and enter the attached order authorizing Debtor to retain me as its bankruptcy counsel.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed this September 3, 2024.

Handbook

Miles Archer Woodlief

1 Miles Woodlief (SBN124467)
2 ArcherTM
3 775 East Blithedale Avenue
4 Suite 514
5 Mill Valley, California
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8 Attorney for Debtor and Debtor-in-Possession

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10 UNITED STATES BANKRUPTCY COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 (Oakland Division)
13

14
15 In Re:) Chapter 11
16 Nutrition 53, Inc.) Case No.: 4:23-bk-40997
17 Employer's Tax Identification (EIN) No. :)
18 xx-xxx9583)
19 Debtor)

20
21 **ATTORNEY STATEMENT UNDER 11 U.S.C. § 329(a) AND**
22 **FEDERAL RULE OF BANKRUPTCY PROCEDURE 2016(b)**
23

24 I, Miles Archer Woodlief, state as follows:

- 25 1. I am an attorney currently practicing at 775 East Blithedale Avenue, Suite 514,
Mill Valley, CA 94941 and have been duly admitted to practice in this Court.
2. I have not agreed to share any compensation that may be awarded to me in
connection with my representation of Nutrition 53, Inc., Debtor and Debtor in Possession
("Debtor") in this bankruptcy case with any other person.
3. Debtor has paid me fees in connection with this case of \$20,000, which sum was
drawn down to a zero balance in light of fees incurred from June through the filing date.
Debtor has also agreed to compensate me in the manner set forth in the "Application To

1 Employ Miles Archer Woodlief As Bankruptcy Counsel For Debtor In Possession" which was
2 filed with this Court concurrent with this Statement.

3 Since the filing date through the date of this Application, I have not invoiced Debtor for
4 my services, nor will I be doing so. I did not do so to allow the Debtor the opportunity to
5 return to operational integrity, which I believe it has now done.

6 I will, however, seek reimbursement of out-of-pocket expenses from this period.

7 I declare under penalty of perjury that the foregoing is true and correct to the best of my
8 knowledge and belief. Executed this September 3, 2024.

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12 _____
Miles Archer Woodlief

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PROOF OF SERVICE

I, Miles Archer Woodlief, certify and declare as follows:

I am over the age of 18 years, and not a party to this action. I maintain an office at 775 East Blithedale Avenue, Suite 514, Mill Valley, CA 94941, which is located in the county where the mailing described below took place.

I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

On September 24, 2024, at my place of business at Mill Valley, California, a copy of (i) Debtor's Application to Employ Woodlief as Counsel, (ii) Woodlief's Attorney Statement under 11 U.S.C. § 329(a) and Federal Rule of Bankruptcy Procedure Rule 2016(b) and (iii) Woodlief's Declaration in Support of Application to Employ Miles Archer Woodlief as Bankruptcy Counsel for Debtor in Possession the above-referenced document was placed in the United States Postal Service in a sealed envelope, with postage fully prepaid, addressed to:

Altec Packaging, Inc
c/o Stacie L. Pearson
1711 Junction Ct., #350 San Jose, CA 95112

Amazon.com
c/o Amazon Capital Services, Inc.
410 Terry Ave. North
Seattle, WA 98109-5210

Boos & Associates
c/o Marissa Guzman
5260 N. Palm Ave Suite 120
Fresno, CA 93704-2216

Boutin Jones Inc
c/o Boutin Jones Accounting
555 Capitol Mall, Suite 1500
Sacramento, CA 95814

Central Transport
c/o Samantha
12225 Stephens Rd.
Warren, MI 48089

Command Nutritionals
c/o Cristina Coutinho

1 10 Washington Ave.
2 Fairfield, NJ 07004

3 Ergo Law
4 c/o Rod Atherton
5 6870 W. 52nd Ave. Suite 203
6 Arvada, CO 80002

7 Federal Express
8 c/o US Collection Department
9 P.O. Box 7221
10 Pasadena CA 91109-7321

11 Franchise Tax Board
12 P.O. Box 942867
13 Sacramento, CA 94267

14 JAH Interests V, LLC
15 c/o Jason Hall
16 2900 Daniel Ave Dallas, TX 75205

17 Mihir Mange
18 c/o Mihir Mange
19 9662 Velvet Leaf Circle
20 San Ramon, CA 94582

21 Kristine Manlapaz
22 c/o Kristine Manlapaz
23 3008 Oakraider Dr. 10
24 Alamo, CA 94507

25 Barbara Legrand
c/o Barbara Legrand
1828 Ivanhoe Avenue
Lafayette CA 94549

Nebo Web Inc
c/o Mercedes Oben
108 Samat St. Ayala Alabang Village
Muntinlupa, Philippines 1780

Jonathan Padilla
c/o Jonathan Padilla
1117 Ocean Ave., #308
San Francisco, Ca, 94112

1 Pinecrest Capital Partners
2 c/o Barrett Kingsriter
3 8235 Douglas Ave, Suite 550
4 Dallas, TX 75225

5 Proform Laboratories
6 c/o Kaitlyn Walker
7 5001 Industrial Way
8 Benicia, CA 94510 US

9 Alexandra Romanowski
10 c/o Alexandra Romanowski
11 1828 Ivanhoe Avenue Lafayette CA 94549

12 Bill Romanowski
13 c/o Bill Romanowski
14 1828 Ivanhoe Avenue
15 Lafayette CA 94549

16 Dalton Romanowski
17 c/o Dalton Romanowski
18 2523 NE Harvey Ln
19 Bend OR 97703

20 Smoothie King Franchises, Inc.
21 c/o Barbara Mayrand 10
22 9797 Rombauer, Ste. 150
23 Dallas, TX 75019

24 Jon Douglas Swartz
25 c/o J.D. Swartz
40 Center St.
San Rafael CA 94901

Third Wind Holdings LLC
c/o Rogers Healy
5550 Preston Road, Suite B.Dallas, TX 75205

Total Quality Logistics
c/o Anthony Gettys
P.O. Box 634558
Cincinnati, OH 45263-4558

Wideumbrella
c/o Kristine Manlapaz
3008 Oakraider Dr

1 Alamo, CA 94507

2 and that envelope was placed for collection and mailing on that date following ordinary business
3 practices.

4 I further certify that on September 24, 2024, a copy of the above-referenced
5 document was served on the following through the Court's CM/ECF system, which will send an
6 electronic copy to:

7 Trevor Ross Fehr on behalf of U.S. Trustee Office of the U.S. Trustee/Oak
8 trevor.fehr@usdoj.gov

9 Peter F. Jazayeri on behalf of Creditor JAH Interests V, LLC
10 peter@jaz-law.com

11 Ivo Keller on behalf of Creditor PRO PERFORMANCE DISTRIBUTION INC.
12 ivo@sslfirm.com

13 Office of the U.S. Trustee/Oak
14 USTPRegion17.OA.ECF@usdoj.gov

15 I certify and declare under penalty of perjury under the laws of the State of
16 California that the foregoing is true and correct. Executed on September 24, 2024,.

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Miles Archer Woodlief